

3576 RF 92

United States Government

Department of Energy

DATE

memorandum

JUL 9 2 42 PM '92

Rocky Flats Office

ACTION

DIST LTR ENC

BENJAMIN A	
BERMAN, H S	
BRADY, J A	
BRANCH, D B	
CARNIVAL, G J	
COPP, R D	
CORDOVA, R C	
DAVIS, J G	
EVERED, J E	
FERRERA, D W	
GOOWIN, R	
HANNI, B J	
HEALY, T J	
HILBIG, J G	
IDEKER, E H	
KERSH, J M	XX
KIRBY, W A	
KRIEG, D	
KUESTER, A W	
LEE, E M	XX
MARX, G E	
MORGAN, R V	XX
PIZZUTO, V M	
POTTER, G L	
SANDLIN, N B	
SATTERWHITE, D G	
SCHUBERT, A L	XX
SHEPLER, R L	
SULLIVAN, M T	
SWANSON, E R	
TALLMAN, K G	
WILKINSON, R B	
WILSON, J M	
ZANE, J O	

Amendt, M	XX
Nesta, S	XX
Flory, R	XX
Hobbs, E	XX
Kennedy, C	XX

CORRESP CONTROL	y	y
TRAFFIC		

Reviewed for Addressee
Corres Control RFP

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DATE BY

Ref Ltr #

JUL 08 1992

ERD BKT 7300

ESA/MBTA Compliance

J M Kersh, Associate General Manager
Environmental and Waste Management
EG&G Rocky Flats, IncEG&G
ROCKY FLATS PLANT
CORRESPONDENCE CONTROL

This memorandum is in response to EG&G memorandum 92-RF-6706 from E Evered dated June 15, 1992, regarding the installation of sediment samplers at the RFP. In your June 15, 1992 memorandum, you requested that DOE/RFO provide you with written confirmation that no issues remain with respect to the installation of sediment samplers. A cursory review of the attached DOE/RFO and EG&G memoranda and letters will indicate why issues regarding the Endangered Species Act (ESA) and Migratory Bird Treaty Act (MBTA) remain open with regard to the sediment samplers.

DOE/RFO memorandum ERD BKT 7753, dated September 20, 1991, directs EG&G that all activities conducted at the RFP are to be in compliance with the ESA and MBTA. DOE/RFO letter 91-DOE-7649 to the U S Fish and Wildlife Service (FWS), dated September 18, 1991, opened the consultation process for the surface water monitoring stations per the MBTA and Fish and Wildlife Coordination Act. Note that several individuals at EG&G were copied on this letter. DOE/RFO memorandum ERD BKT 3047 requested EG&G to have an expert on *Spiranthes diluvialis*, a listed species under the ESA, perform habitat surveys for the plant at the surface water monitoring stations. EG&G memorandum 92-RF-4077 identified surface water monitoring stations which require a presence/absence survey for *Spiranthes* during July and August 1992. DOE/RFO memorandum ERD BKT 6624, dated June 15, 1992, directs EG&G that all applicable statutes and regulations, including the ESA and MBTA, must be complied with prior to initiating construction of the surface water monitoring stations.

Both the ESA and MBTA contain civil and criminal liability provisions for the taking of listed species and migratory birds, respectively. Initiating the construction of surface water/sediment stations prior to completing the required consultations with the FWS could put EG&G in violation of the law.

Again, we request that EG&G complete the consultation under the ESA and MBTA prior to initiating surface water/sediment monitoring station construction at the RFP.

As a final note, better communication within the EG&G organization will decrease the probability of ESA and MBTA violations. In addition, it will also free DOE/RFO from having to write multiple memoranda to EG&G on the same subject. We encourage EG&G management to foster communication among the various organizations.

ADMIN RECORD

J M Kersh
ERD BKT 7300

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JUL 08 1992

Questions or concerns should be directed to Bruce Thatcher of my staff at ext 3532



James K. Hartman
Assistant Manager for
Environmental Management

Attachments

cc w/Attachments
A Rampertaap, EM-453
F Lockhart, ERD, RFO
R Schassburger, ERD, RFO
B Thatcher, ERD, RFO
M Van Der Puy, EMB, RFO
G Litus, SMS, EMB, RFO
M Arndt, EG&G
S Nesta, EG&G
R Flory, EG&G